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NOS. 99-1739; 99-1745

IN THE

Supreme Court of the United States

DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD,
Cross-Petitioner,

v.

THE UNITED STATES DEPARTMENT OF TRANSPORTATION,
Respondent.

AMERICAN AIRLINES, INC.,
Petitioner,

v.

THE UNITED STATES DEPARTMENT OF TRANSPORTATION,
Respondent.

On Petition and Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION OF CONTINENTAL EXPRESS, INC.

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CORPORATE DISCLOSURE STATEMENT

Continental Express, Inc. is wholly owned by its parent, Continental Airlines, Inc., which is a publicly held corporation.

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BRIEF IN OPPOSITION OF CONTINENTAL EXPRESS, INC.

COUNTER-STATEMENT OF THE CASE AND THE ISSUE ADDRESSED HEREIN

The petition of American Airlines, Inc. in No. 99-1745 and the cross-petition of the Dallas Fort Worth International Airport Board in No. 99-1739 set forth essentially the same arguments concerning the preemption issue decided by the Fifth Circuit as are raised by the petition filed by the City of Fort Worth in its petition in No. 99-1462. On that issue,

Continental Express hereby adopts and reasserts the points made in its Opposition to the Petition for Certiorari filed in No. 99-1462.

The Cross-Petition of Dallas-Fort Worth International Airport Board and the Response of Southwest Airlines Co. to that cross-petition in No. 99-1739 raise an additional issue concerning the deference to be afforded the Department of Transportation in its interpretation of the Wright Amendment with respect to the carriage of through and connecting passengers on commuter airline flights operated at Love Field. Continental Express responds to this additional argument below.

REASONS FOR DENYING THE WRIT

Alone among the petitioners, the Dallas-Fort Worth International Airport Board ("DFW") has asked the Court to review the Fifth Circuit's affirmance of the Department of Transportation ("DOT") decision that the Wright and Shelby Amendments permit passengers on unrestricted flights by "commuter airlines operating aircraft with a passenger capacity of 56 passengers or less" to operate between Love Field and points within Texas to connect to and from other flights without restriction, and Southwest Airlines Co. ("Southwest") has supported the DFW petition. Neither the DFW cross-petition nor the response presents any reason for this Court to review the Fifth Circuit's decision below.

First, the Wright and Shelby Amendments apply to flight operations at only one airport: Love Field. Thus, the Fifth Circuit's decision on through and connecting service applies only to flights operated at one airport and cannot be of such national significance to merit plenary review.

Second, unlike the other issues raised by petitioners, this through-ticketing issue was neither addressed in the Texas courts nor raised in the original Texas action brought by

Petitioners. Thus, there is no conflict between any Texas state court decision and the decision of DOT and the Fifth Circuit on this issue.[1]

Finally, knowing there is no issue of national importance involved, and knowing there is no state-federal conflict presented, DFW and its supporter, Southwest, seek to elicit grant of certiorari by creating a conflict between the Fifth Circuit and the D.C. Circuit where none exists.

When Congress adopted the Wright Amendment restricting service at Love Field, it permitted service at Love Field under two independent, alternative conditions: section (a) permits unrestricted flights at Love Field with relatively inefficient small commuter aircraft while section (b) permits large-aircraft operations restricted to a narrow geographic area without the ability to offer through or connecting service beyond that area. DFW and Southwest now argue, as they have done unsuccessfully before in court and at DOT, that these conditions are cumulative: operators of small aircraft must also be precluded from offering passengers through or connecting service. DFW and Southwest ask this Court to review this narrow issue based on erroneous arguments that the DOT decision affirmed by the Fifth Circuit conflicts with a prior D.C. Circuit decision deferring to DOT's previous,

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[1] There is also no longer a conflict between the DOT and Fifth Circuit decisions and decisions of the Texas courts regarding the scope of nonstop operations with commuter aircraft at Love Field or preemption of restrictions by the Airline Deregulation Act ("ADA") in light of the state appellate court's decision that flights on commuter aircraft can operate "to or from Love Field without geographical limitation" and that "enforcement . . . of the Bond Ordinance restrictions at Love Field is not a permissible exercise of proprietary powers under the ADA." (*See Legend Airlines v. City of Fort Worth*, No. 2-99-098-CV, Court of Appeals, Second District of Texas, Fort Worth, May 25, 2000 at 30-31, 25-26 (lodged with the Court).

similar, interpretations of the Wright Amendment and congressional intent in adopting the Wright Amendment.

In 1985, DOT noted that it "is clear that usual ticketing, scheduling and ratemaking practices would not be . . . affected, beyond the specific Love Field restrictions" and that "operations . . . using small aircraft are exempt from the [Wright] Amendment with respect to Love Field operations."[2]

Although DOT has concluded that operations with small aircraft are entirely exempt from the Wright Amendment's restrictions, it decided, in a separate section of its 1985 decision, that operators of *large* aircraft offering *intrastate* service at Love Field were not exempt from the Wright Amendment and could not "offer, promote or sell through service and fares or tickets between Love Field and points outside the authorized service area using another Texas city as the connecting point." (Order 85-12-81, App. 1 at 19a) because the service would cease to be "intrastate."

When the D.C. Circuit reviewed DOT's 1985 decision, and Southwest claimed then (as now) that "DOT's interpretation leaves a gaping loophole in the statutory scheme because it allows large airlines to use small aircraft as 'feeders' for interstate operations," the D.C. Circuit rejected Southwest's argument and concluded that the Department's interpretation was entitled to deference. (*Continental v. DOT*, 843 F. 2d 1444 at 1454 (D.C. Cir. 1988) When the D.C. Circuit affirmed the separate DOT conclusions regarding small commuter aircraft service and intrastate large aircraft service, it made no decision whatsoever precluding airlines operating

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[2] Order 85-12-81, App. 1 at 8a, 11a-18a. Although DFW included parts of DOT Order 85-12-81 in its Appendix, it omitted sections relevant to the issues raised here. Continental Express has therefore included a copy of the entire decision in its Appendix.

small commuter aircraft from offering through or connecting service on their Love Field flights.

Although the D.C. Circuit confirmed DOT's interpretation in part because it was consistent with the purpose of the Wright Amendment to limit Love Field to short-haul service, the primary basis for confirming DOT's interpretation was the D.C. Circuit's disagreement with Southwest's restrictive interpretation of the "commuter airline" definition. (*Continental v. DOT*, 843 F. 2d 1444 at 1454-1455. Subsequent enactment of the Shelby Amendment to permit operations at Love Field with larger aircraft (reconfigured to 56 seats or less) capable of offering nonstop service between Love Field and any point in the contiguous United States clearly evidences a more recent congressional intent to permit long-haul service at Love Field pursuant to the commuter exception in Section (a) of the Wright Amendment.[3]

There is simply no conflict between these two Court of Appeals decisions, rendered eleven years apart, with a further congressional directive regarding expanded operations by commuter aircraft enacted in the interval between the decisions.

DFW and Southwest have presented no reason for this Court to review the Fifth Circuit's decision that affirms DOT's interpretation that the Wright and Shelby amendments permit Continental Express to operate commuter aircraft at Love Field connecting to and from other flights at Houston. The statutory provision interpreted by DOT and the Fifth

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[3] As the Texas appellate court said in *Legend v. City of Fort Worth*, "A plain reading of the Shelby Amendment ... shows that congressional intent has shifted toward allowing commuter airlines to operate many types of aircraft out of Love Field that are capable of providing long-haul service. Appellees' narrow definition of commuter airlines would frustrate this clear intent and render the express language of the Shelby Amendment meaningless." (at 29)

Circuit is unique to Love Field; there is no conflict between DOT and the Fifth Circuit, on the one hand, and any Texas court decision, on the other hand; and there is no conflict between the D.C. Circuit and the Fifth Circuit on this issue. There is no reason for this Court to take review of this issue.

CONCLUSION

The petition in No. 99-1745 and the cross-petition in No. 99-1739 for issuance of a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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May 31, 2000

APPENDIX

Order 85-12-81

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 31st day of December 1985

Docket 43307

LOVE FIELD AMENDMENT PROCEEDING

ORDER

By Order 85-7-65 (July 26, 1985), the Department requested comments on the interpretation of the Love Field Amendment (Amendment) (Sec. 29, International Air Transportation Competition Act of 1979, Pub. L. 96-192, 94 Stat. 35 (1980)), which restricts service by air carriers at Love Field, Texas.[4] Our request for comments followed announcement by Continental Airlines of its intention to commence service at Love Field and opposition of various persons to this service. On July 10, 1985, the Dallas/Fort Worth (DFW) Parties[5] submitted a letter to the Department's Office of Aviation Enforcement and Proceedings seeking an informal enforcement investigation and order prohibiting Continental's proposed service.

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[4] The question of proper interpretation of the Love Field Amendment was previously raised in the *Southwest Airlines – Muse Air Acquisition Proceeding*, where the Department found it unnecessary to reach the issue in its decision. Order 85-6-79 (June 24, 1985). We did, however, suggest that the issue should be resolved in another context. *Id.*

[5] The DFW Parties are the City of Dallas, Texas, the City of Fort Worth, Texas, and the Dallas-Fort Worth International Airport Board.

In view of the current dispute regarding Love Field service, and because the issue is primarily a question of law, we asked for comments to assist us in interpreting the Amendment. Responders were asked to specifically address the questions of whether an air carrier can serve Love Field on a non-interline basis, if the carrier interlines elsewhere on its system; and whether the Amendment applies to intrastate service. We received comments and reply comments from: Air Midwest, America West Airlines, Continental Air Lines, the Dallas/Fort Worth Parties, Delta Air Lines, the Department of Justice, the Regional Airline Association, Republic Airlines, and Southwest Airlines, Co., and several letters from the general public. In addition to comments concerning statutory interpretation, several parties raised related questions about marketing of Love Field services in a manner consistent with provisions of the Amendment. We have considered all comments and have also taken notice of Orders 80-3-9, 80-5-12, 80-8-181, and 80-12-102 of the Civil Aeronautics Board, the pleadings in *City of Dallas v. CAB*, Case Nos. 80-2064 and 81-1192 (D.C. Cir. 1980), and the legislative history of the Amendment in interpreting its meaning.

After careful review of these matters, the Department has decided that: 1) Continental's proposed service between Love Field and Houston, Texas, does not violate the Love Field Amendment; 2) the Amendment does not apply to flights by intrastate carriers or intrastate service by an "air carrier"; 3) upon the request of passengers, Continental or its agents may sell "double tickets" to passengers continuing on a different aircraft and flight beyond an authorized destination from Love Field; 4) however, neither Continental nor its agents may list in any manner, including a computer reservation system, a flight from Love Field as a "connection" to a point beyond the Love Field authorized service area; 5) Delta, or any other airline, may list in its computer reservation system flights from Love Field by a

certificated carrier using small aircraft in the same manner as commuter carrier flights; and 6) intrastate and air carriers may provide service between Love Field and other points within the state of Texas so long as they do not use this service to avoid the Love Field Amendment's restrictions on interstate air service.

BACKGROUND

Since the completion of Dallas/Ft. Worth Regional Airport (DFW), which resolved a long-standing rivalry between Dallas and Ft. Worth for interstate service to their communities, the DFW Parties have sought to prohibit interstate service at other area airports. The DFW Parties, in fact, previously asked the CAB to prohibit interstate service at area airports other than DFW, especially Love Field. The CAB refused to do so. The DFW Parties' argument for this prohibition in the years immediately following completion of the regional airport was that interstate operations at Love Field would damage the viability of the new airport. *See* Order 79-9-192 (September 28, 1979).

In addition, the Airline Deregulation Act of 1978 (Pub. L. 95-504, 92 Stat. 1705 (1978)) substantially changed the Federal government's regulatory oversight of air transportation. In particular, the Act includes a provision, as part of the listing of public interest elements, concerning the use of satellite airports and the power of regional authorities over their use. Section 102(a)(6), 49 U.S.C. 1302(a)(6). Some members of the House of Representatives apparently believed this provision would prohibit the CAB from authorizing interstate service at Love Field, but the Conference Report on the subsequently passed Love Field Amendment indicates the Senate did not share this view. S. Rep. No. 96-531, 96th Cong., 1st Sess. (1980) [hereafter, Conference Report]. The Deregulation Act also includes provisions, known as the Automatic Market Entry (AME)

program, that allowed carriers to enter certain markets prior to complete route deregulation without a CAB finding that entry was needed. Section 401(d)(7), 49 U.S.C. 1371(d)(7). Under the AME provisions, the CAB ruled that Southwest Airlines could provide interstate service from Love Field, notwithstanding section 102(a)(6). Order 79-9-192 (September 29, 1979).

Congress subsequently addressed the dispute respecting service at Love Field in an amendment to the International Air Transportation Competition Act (IATCA). Congressman Jim Wright initially introduced an amendment to IATCA, passed by the House, that effectively prohibited all interstate air service at Love Field. However, the Senate version of IATCA contained no similar provision. The Conference Committee adopted a compromise solution to settle the controversy, producing the current Love Field Amendment. It rejected Congressman Wright's total ban on interstate air service at Love, but imposed substantial restrictions. Subsection (a) of the Amendment prohibits the CAB or its successor from authorizing interstate service (other than limited charter and commuter flights) to Love Field, except in accordance with remaining provisions of the Amendment. Subsection (b) prohibits interstate scheduled service at Love Field, except in accordance with other provisions of the Amendment, or if such service was operated before November 1979. This section assured that Southwest could continue to operate Love Field service the CAB had previously authorized. Subsection (c) defines the scope of permissible service as follows:

> (c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, and Texas by an air carrier, if (1) such air carrier does not offer or provide any through

> service or ticketing with another air carrier or foreign air carrier, and (2) such air carrier does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside any such state. Nothing in this subsection shall be construed to give authority not otherwise provided by law to the Secretary of Transportation, the Civil Aeronautics Board, and any other officer or employee of the United States, or any other person.

Continental does not plan on operating from Love Field beyond the five-state area specified in (c), an action which would be clearly prohibited. Rather, Continental plans to serve Love Field with flights to Houston. Continental has interline agreements with other carriers and provides interline service at its Houston hub. Thus, in interpreting the Amendment, we must interpret the interline prohibition contained in (c)(1) to determine whether the Amendment should be construed to prohibit a carrier that interlines elsewhere on its system from serving Love Field, or whether it should be construed merely to prohibit interlining in connection with service at Love Field.

The Dallas-Ft. Worth Parties and Southwest argue that the Amendment prohibits service at Love Field by carriers that interline anywhere on their systems, even if no interline service is provided on flights serving Love Field. The Justice Department disagrees, arguing that Congress' intent in enacting the Amendment was to prohibit interlining only in connection with Love Field service. Justice notes that this view is consistent with prior CAB interpretations of section (c)(1).

The CAB's most detailed interpretation of the interline prohibition occurred in connection with an airport notice filed in 1980 by Texas International Airlines (TI) to inaugurate

interstate service from Love Field.[6] The airport notice was opposed by Southwest and the DFW Parties on the grounds that the Amendment prohibited Love Field service by interlining carriers, such as TI, even if the carrier did not provide interline service from Love.[7] The CAB disagreed and permitted TI to institute the proposed interstate service. Interpreting the Amendment as restricting interlining on flights serving Love Field, rather than as a total prohibition on serving Love Field by carriers that interline elsewhere on their systems. Order 80-8-181 (August 29, 1980).[8] The DFW Parties sought judicial review of that order. *City of Dallas v. CAB*, Case Nos. 80-2064 and 81-1192 (D.C. Cir. 1980). The issue, however, was never resolved, because TI discontinued its Love Field service during the course of the appeal; and the case was dismissed as moot.

Continental's proposed service at Love Field is similar to the earlier service of TI approved by the CAB. The issues and positions of interested parties remain much the same as in TI's 1980 application. After careful review of comments, the plain words of the Amendment, and its legislative history, we have determined that the CAB properly interpreted subsection (c)(1) as only prohibiting interlining on flights serving Love Field. Thus, we find the Amendment does not prevent Continental from providing service between Love Field and Houston.

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[6] TI was subsequently merged into Continental after its parent, Texas Air Corporation, acquired Continental.

[7] Unlike TI, Southwest, which had previously been authorized by the CAB to provide service at Love, did not interline with other carriers elsewhere on its system. Order 79-9-192 (September 29, 1979).

[8] In addition, the CAB found that the Amendment's restrictions, while statutory and clearly applicable without further regulatory action, should be embodied in certificates authorizing such service, as intended by Congress (Conference Report at 25). Order at 6.

OPERATIONS BY AN AIR CARRIER WITH INTERLINE SERVICE

The Department interprets the Amendment as not prohibiting non-interline service at Love Field by an air carrier that provides interline service elsewhere on its system. The DFW Parties, Southwest, and Republic, who do not agree with this interpretation, contend that we should first look to the plain wording of the Amendment to ascertain Congressional intent, unless the literal wording of the statute would lead to "unreasonable" or "incongruous" results. *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). We do not disagree.

In examining the wording of the Amendment, it is clear that the critical part of subsection (c) is one sentence regarding service by "an air carrier" "on a *flight* between Love Field, Texas," and points in Texas and the adjacent four states. Subclause (1) prohibits "such air carrier" from offering or providing through service or ticketing with other carriers; and subclause (2) prohibits the carrier from offering for sale transportation to a point outside the authorized area, and serving such a point on a flight that also serves Love Field. In our view, the plain and literal meaning of subsection (c) refers to a specific "flight," and subclauses (1) and (2), which must logically be read together (the clauses are joined by the conjunction "and"), describe restrictions applicable to the flight. As further discussed below, the legislative history is not contrary to this plain reading; and this reading is not unreasonable. *See, Nat'l Small Shipments Traffic Conference v. CAB*, 618 F.2d 819 (D.C. Cir. 1980).

The DFW Parties and Southwest offer a significantly different reading of the literal words of subsection (c). Their proffered meaning rests on the assumption that subclauses (1) and (2) must be read separately. Under this interpretation, subclause (1) describes a class restriction, prohibiting any carrier that interlines elsewhere on its system from serving

Love Field; while subclause (2) describes an operational restriction, prohibiting this class of carrier from serving Love Field beyond Texas and the four-state area. Thus, the DFW Parties and Southwest contend that subsection (c)(1) is clear in its terms: a carrier that conducts any interlining operations is precluded from offering interstate service at Love. Moreover, under this interpretation, any conflict between subclauses (1) and (2) is illusory; since the DFW Parties and Southwest argue that it is logical to apply subsection (c)(1) universally, while applying (c)(2) only in connection with operations at Love Field.

The Board rejected this reading of subsection (c) as unreasonable, finding that provisions of the Amendment must be read in harmony. Order 80-8-181, at 4 (August 29, 1980). As the CAB stated, to agree with this interpretation of (c)(1) would require a reading of (c)(2) prohibiting an air carrier providing service at Love from providing any service outside Texas and the four adjacent states, even operations unconnected with Love Field service. *Id.*[9] This interpretation would be inconsistent with the statements of the Conference Committee that carriers providing interstate service at Love were not precluded from operating outside the five-state area, as long as through or connecting services to points outside the area were not offered in connection with the carriers' Love Field service. Conference Report at 25-26. It is also inconsistent with the remainder of subsection (c) and the rest of the Amendment, which envisions and regulates interstate service at Love Field. Further, the Conference Report specifically states that carriers' usual ticketing, scheduling, and ratemaking practices would not be otherwise affected. Id. To read the subclauses separately effectively undercuts the Amendment, suggesting that Congress enacted a self-

[9] While this outcome might be acceptable to the DFW Parties, Southwest would probably object.

defeating statute. As the CAB found, Congress intended that carriers providing interline services elsewhere on their systems could provide service at Love Field, as long as they did not provide interline service to points outside the five-state area in connection with their Love Field services. Order 80-8-81 at 5. We agree.

Moreover, our plain reading of the Amendment is supported by a customary understanding of English grammar. To support their interpretation, the DFW Parties and Southwest would have us change the conjunction between the subclauses from "and" to "or," in order to read the clauses separately. However, the clauses are joined together in one sentence as connected restrictions on permitted interstate service at Love Field and used as descriptive modifiers of the term "flight." A contrary reading is grammatically strained and leads to unreasonable and incongruous results, as noted above.

Nor can we accept the arguments of the DFW Parties and Southwest that the CAB improperly modified the language of the Amendment by somehow reading into subclause (1) the words "on a flight" "that precede that subclause. Interestingly, in urging their own interpretation, the DFW Parties and Southwest engage in the same type of error they accuse the Board of having made. Strained modification of language is not necessary to understand the plain meaning of subsection (c); subclauses (1) and (2) must be read together in the context of the entire sentence in which they appear.

All commenters, as well as this Department, believe the Amendment's legislative history supports their reading of the plain meaning of the provision. As discussed more fully below, we find that the legislative history, when reviewed as a whole, supports our interpretation of the Amendment. This finding is consistent with the views of Continental Airlines, America West, and the Department of Justice.

The DFW Parties and Southwest contend that the legislative history embodied in the Conference Committee Report supports their position that Congress intended to preclude from Love Field service carriers conducting any interlining elsewhere on their systems, citing the Conference Report at 24. These parties discount colloquy and statements on the floor of the House and Senate by members of the Conference Committee and floor managers of the legislation indicating that the Committee intended the interlining restrictions to apply only to Love Field service. They further suggest that the Amendment should be considered in the context of "broader" history, noting that the provision of the 1978 Airline Deregulation Act defining services at satellite airports as an element of the public interest was amended to provide that this should be the case only where regional airport authorities and plans supported the use of such satellite airports. They point out that Congressman James Wright assumed this amendment of the Deregulation Act would prohibit the CAB from authorizing interstate service at Love Field. When the Board subsequently authorized Love Field service, Congressman Wright introduced an amendment to the IATCA of 1979 that would have prohibited interstate service at Love. The House adopted this amendment, but the Senate version of IATCA included no comparable provision. While the DFW Parties and Southwest do not dispute that the current version of the Love Field Amendment was a compromise agreed to in conference, they nonetheless argue that Congress intended this provision to be very restrictive.

In our view, the legislative history, properly read, supports a less restrictive interpretation of the interline provision. The Conference Report begins by stating: "Section 29 as approved by the conferees embodies a compromise which permits limited commercial passenger service in interstate transportation at Love Field." Conference Report at 24. In addition, Congress clearly knew the extent of interlining practices among air carriers, since the Airline Deregulation

Act and IATCA itself (specifically sections 11, 14 and 15) contain provisions involving agreements and fares;[10] and the Report is clear that usual ticketing, scheduling, and ratemaking practices would not be otherwise affected, beyond the specific Love Field restrictions. Conference Report at 26.

The Conference Report continues: "Subsection c permits turnaround service between Love Field and points in the four contiguous states." The turnaround nature of the authorized flights is repeated in the next paragraph. The DFW Parties' and Southwest's analysis of legislative history focuses almost entirely on the following paragraph. While those parties contend that that paragraph indicates that carriers who interline anywhere on their systems are barred from serving Love Field, the paragraph, in fact, is merely a repetition of the words of the Love Field Amendment. The Conference Committee more fully explained the meaning of that language in the next paragraph – an explanatory paragraph the DFW Parties and Southwest have apparently ignored. That paragraph begins: "Thus, a carrier providing service from Love Field to a point in one of these states is not forbidden from providing service from that point to other points in other states beyond . . . ." The Conference Report continues: "While it could not sell through tickets . . . between Love Field and points beyond the contiguous states, its usual ticketing, scheduling and ratemaking practices would not be otherwise affected." Since Congress knew that these enumerated practices constituted interlining, it is not

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[10] The DFW Parties and Southwest assert that the Amendment takes precedence over, and need not be harmonized with, IATCA and the earlier Deregulation Act. Even if this is so, it is not reasonable to assume that Congress would have adopted the Amendment with the purpose of granting a carrier (Southwest) a de facto monopoly position at Love Field after having enacted prior legislation with the primary purpose of placing greater reliance on competitive and market forces to protect the public interest.

reasonable to argue that Congress intended to bar air carriers who interline elsewhere on their systems from serving Love Field.

The legislative history supports our view that Congress intended to make Love Field a short-haul airport limited to turnaround intrastate and interstate service in five states. As a result, subclauses (1) and (2) are not properly read as class and operational restrictions, respectively. Rather, these subclauses simply specify interline and on-line restrictions applicable to service at Love Field.

Moreover, statements of Congressman Anderson of California and Senator Cannon of Nevada also support this interpretation of the Amendment. Each was a member of the Conference Committee, and each was the floor manager of the bill reported out of the Conference Committee. The views of Conference Committee members and floor managers are entitled to greater weight than that usually afforded the views of individual legislators, especially where such expressed views are consistent with other elements of the legislative history. *Train v. Colorado Public Interest Group*, 426 U.S. 1, 14 (1976). The DFW Parties and Southwest rely on the statements of Congressman Wright in support of the House version of the bill, rather than those of Congressman Anderson and Senator Cannon in support of the Committee version; however, Congressman Wright was not a member of the Conference Committee, the bill reported by that Committee was not the House version he had sponsored, and both the House and Senate accepted the compromise provision reported out by the Conference Committee.

On the floor of the House, Congressman Anderson, explaining the Amendment, said: "The prohibition in section 29(c)(1), against an air carrier providing through service or ticketing with another air carrier . . . only applies with respect to a carrier's Love Field service . . . ." 126 Cong. Rec. H. 520 (February 4, 1980). In a colloquy on the Senate floor,

Senator Cannon expressed the same understanding. 126 Cong. Rec. S. 952 (February 5, 1980). The legislative history, taken as a whole, supports our view that the intent of Congress in the Love Field Amendment was to limit interstate service at that airport to short-haul, turnaround flights, not to prohibit carriers offering interline services elsewhere from serving Love Field. The floor debates likewise indicate that operations not touching Love Field were not to be included within the prohibitions of the Amendment.

In sum, the Department believes that the plain wording of the Amendment and the legislative history, including the Conference Report and relevant statements by the Amendment's floor managers, show that our less restrictive interpretation of the Amendment is correct. Thus, we find that Continental may serve Houston from Love Field, although the carrier provides interline services elsewhere on its system. This conclusion is supported by the comments of various parties, including the Justice Department, American West, and Air Midwest. The arguments of the DFW parties and Southwest to the contrary are not persuasive. Further, since we find that Continental may serve Love Field consistent with restrictions of the Amendment, we have determined that it is not necessary to address Continental's additional argument that the amendment may violate the equal protection clause.

Finally, Republic argues that permitting Continental to serve Love Field is unfair in a competitive sense, since our interpretation of the Amendment benefits those carriers who maintain hubs in Texas and the four contiguous states to the exclusion of those who do not. Republic's argument is not convincing. Republic is free to establish its hubs wherever it chooses. There is nothing competitively unfair to Republic in our interpretation of the Love Field Amendment as drafted and intended by Congress.

MARKETING RESTRICTIONS

Continental raised four questions in its comments regarding marketing problems faced by carriers serving Love Field. The statements attached to its comments are a vivid demonstration of the confusion present today in Love Field service. Continental first asks: 1) whether a passenger may buy two tickets (so-called "double ticketing") at Love Field, one for service from Love Field to a point within Texas or the four adjacent states, and a separate, second ticket for service from that destination to a beyond point; and 2) whether the second ticket may be for the carrier's most efficient connecting flight. The answer to both questions is yes. To hold otherwise would be unreasonable and beyond that needed to effectuate the Amendment's restrictions. *See*, CAB Order 80-12-102 (December 18, 1980).

The language of the Amendment and is legislative history indicate that Congress had two concerns in restricting service to Love Field. First, Congress intended to prohibit carriers from providing through service and ticketing beyond the authorized Love Field service area. Conference Report at 25. However, Congress did not intend to preclude a carrier from operating flights from a destination point served from Love Field to a point outside the Love Field service area. Id. at 26. Second, Congress intended to prohibit carriers from promoting, offering, or holding out service from Love Field to a point beyond the service area. Subsection (c). Conference Report at 25. Congress used the word "offer" in the Amendment itself; although the legislative history refers to "holding out." In some contexts, the terms "offer" and "hold out" can be used interchangeably. *United States v. Contract Steel Carriers*, 350 U.S. 409 (1956); *Cf. Grajewski v. Commissioner*, 723 F2d 1062, (2d Cir. 1983).

"Through service" and ticketing specifically refer to the provision of transportation between an ultimate origin and destination on a single ticket for a single sum fare. *Cf. Tariff*

Flexibility Rulemaking ER-1246, Order 81-81-58 (November 10, 1981). *See also, Visit USA/Export/Inland Contract Rate Investigation (VUSA Investigation)*, Order 84-8-55 at 26 (August 10, 1984). The service may be offered on a single flight with one or more stops, or it may be offered on connections between two flights. The key concept is that it is sold by the carrier, and perceived by the passenger, as a single trip on a single ticket for a single sum fare, thus constituting a single contract.[11] Through service provides certain conveniences for the passengers. For example, the passenger need not reclaim checked baggage upon arrival at the connecting point and recheck it on the next flight on his or her itinerary.

In contrast, double ticketing involves the use of two tickets (hence, two contracts of carriage), the payment of two separate fares, and requires the passenger to forego the service conveniences associated with through ticketing. Although Congress prohibited through service and fares at Love Field, it intended that a carrier's "usual ticketing, scheduling and ratemaking practices would not be otherwise affected." Conference Report at 26. Such "other" practices may include double ticketing. *Cf. Interstate and Intrastate Fares in California Markets*, 71 CAB 23 (1976).

The language of the Amendment makes clear that a carrier cannot advertise, promote, or otherwise affirmatively solicit double-ticketing passengers. The question, then, is whether the sale of double-ticketed service at the unsolicited request of a customer amounts to an offer or holding out. Such a sale is not necessarily an offer. An offer is a proposal to sell a

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[11] In the case of connecting flight service, the amount of the fare may be calculated by simply adding the local fares on individual flight segments, or it may be a different, usually lower, fare reflecting costs or competitive considerations. The key concept, again, is that the fare is stated as a single amount. *Cf. VUSA Investigation*, Order 84-8-55 at 27.

ticket or provide transportation. *Frissell v. Nichols,* 94 Fla. 403, 114 So. 431,433 (1927); *Cf. Daitom, Inc. v. Pennwalt Corporation* 741 F2d 1569 (10th Cir. 1984). If a carrier simply responds to a customer's unsolicited request, it has not proposed to sell air transportation, but, rather, has accepted a proposal to buy such transportation from the customer, although the carrier's acceptance results in a contract. Congress prohibited carriers from "offering for sale ... transportation to or from ... any point which is outside [the Love Field Service area]"; but neither the wording nor the legislative history prohibits carriers from selling, or passengers from purchasing, transportation to points outside the Love Field service area. While the Amendment prohibits single-plane flights, interline service, through service and ticketing, and advertising and promotion of service outside the Love Field service area, it does not appear that Congress intended to preclude entirely the use of Love Field by passengers who take the effort to find out that double-ticketed service is available, who demand such tickets, and who accept the inconvenience of that service. Thus, to prohibit double ticketing or the sale of a carrier's most convenient flight from a destination in the Love Field authorized service area to a beyond point exceeds what is necessary to prohibit through service and ticketing from Love Field.

Continental's second question, also asked by Delta, is whether a carrier may display in a computer reservations system under "connections" service from Love Field to a point beyond the restricted service area. The answer is no. The Conference Report is clear on this question. It says that "carriers may not hold out, offer or advertise Love Field service to or from points beyond the four contiguous states in any respect, including the publication of connecting flight schedules in airline guides, flight schedules, or similar media." Conference Report at 25. The ban on advertising of service from Love Field beyond Texas and the four contiguous states is clearly envisioned by the Amendment.

The phrase "airline guides, flight schedules, or similar media" includes computer reservations systems. These systems were used at the time of the Amendment's passage and not specifically excluded.

Continental's third, related marketing question is whether a carrier may advertise connecting service and display connecting service, as such, in its flight schedules. Again, the answer is no. Unsolicited information furnished to the public in any form is a means of offering or holding out, which is prohibited. *See, e.g., Red Ball Transit Co. v. Marshall* 8 F2d 321,323 (S.D. Ohio 1925). Moreover, as discussed above, Congress clearly contemplated prohibiting publication of such flights in individual carrier schedules, as well as industry information media.

Continental's fourth question concerns the marketing of fares and their construction. Continental asks whether a fare could be sold and constructed for service from Love Field to a point outside the restricted service area that is different from the sum of the local fares (Love Field to a point in the authorized area, plus that point to a point outside the service fare.) This practice would clearly involve the offer of a through fare, since it could not be considered as anything but a single sum fare. Moreover, it could not be offered as anything but a single contract of carriage, *i.e.,* a single through ticket. This is different from the double-ticketing situation, discussed above, which involves two separate contracts of carriage. The Conference Committee Report states that "... a carrier could not ... offer through fares between Love Field and points beyond the contiguous States ..." Conference Report at 26. Therefore, a carrier cannot offer a constructed fare for double-ticketed service originating or terminating at Love Field.

Throughout this discussion on marketing, we have used the term "carrier" to include travel agents or other persons or methods used by the carrier to sell its tickets and services.

Whenever an agent is acting for a principal, the same restrictions applied to the principal apply to the agent.

SMALL AIRCRAFT OPERATIONS

In connection with its computer reservations system, Delta asks whether a certificated carrier using small aircraft should be treated the same as a commuter carrier serving Love Field. The Amendment specifically authorizes interstate air transportation at Love by commuter airlines using aircraft of 56 seats or less. The term "commuter airline" is not defined elsewhere in the Amendment. The Amendment's language must, therefore, stand on its own. Since Congress specified the size of the commuter aircraft, and since such aircraft has a limited range consistent with other restrictions of the Amendment, we believe Congress intended aircraft size, rather than license classification of the carrier, to be determinative.[12] Thus, we find that operations by either a certificated or non-certificated carrier using small aircraft are exempt from the Amendment with respect to Love Field operations.

INTRASTATE OPERATIONS

We also asked for comments on whether the Amendment applies to intrastate service within Texas. The Amendment is somewhat ambiguous on this question. Subsections (a) and (b), by their terms, apply only to flights form love Field to "points outside the State of Texas." Subsection (c), however states that subsections (a) and (b) do not apply to, and under certain conditions carriers may provide, fights between Love Field and "points within the State(s) of . . . Texas." The Conference Report states that the "provisions do not affect . . . intrastate service in Texas." Conference Report at 25. Thus, we conclude that the Amendment does not apply to

[12] The Department has taken this approach to all aspects of economic regulation of commuter air carriers. 14 C.F.R. 298.90.

service by an intrastate carrier or to service carrying only intrastate passengers by an air carrier.

The more difficult issue, however, is the application of the Amendment to air carriers providing both intrastate and interstate service on the same flight. The CAB faced this question in Order 80-8-181. It decided that carriers could not evade the Amendment's restrictions by providing flights, for example, between Love Field and Houston and then continuing the flights between Houston and points outside the five-state area. The Department believes the CAB was substantially correct. In our view, an air carrier providing interstate service within the authorized four-state service area may provide intrastate service from Love Field on the same flight without violating the Amendment's restrictions. However, the carrier cannot offer, promote, or sell through service and fares or tickets between Love Field and points outside the authorized service area using another Texas city as the connecting point.

ACCORDINGLY,

1. Continental or its agents may provide service from Love Field, Dallas, Texas, to Houston, Texas;

2. Continental or its agents may sell a ticket form an authorized destination of a flight from Love Field to a point beyond that destination, if demanded by a passenger, separately from the ticket for the Love Field flight, provided the amount of the tickets equals the sum of local fares;

3. Continental or its agents may not by any means whatsoever list or advertise "connecting" flights for an authorized Love Field flight to a point beyond the Love Field service area, including listings in a computer reservation system;

4. Delta may list in its computer reservation system service by certificated air carriers that use aircraft of 56 seats or less

serving Love Field in a manner similar to listings for commuter air carriers; and

5. The Amendment does not apply to service by intrastate carriers or intrastate service by an air carrier certificated under the Act.

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(SEAL)